

Legal Custody and Guardianship in Virginia

Virginia Commission on Youth
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ABA Center on Children and the Law

Grandfamilies.org

- Mission: promote access to justice for children and families
- Structure:
 - 15-person team of attorneys and core staff
 - Grant projects across the country focused on:
 - improving legal representation, and
 - improving legal systems that impact children and families' lives
 - Connect child welfare and other legal topics (e.g. immigration, education access, kin caregiving)
- Approach:
 - Collaboration and coalition building
 - local, state and national levels

www.americanbar.org/child



Generations United

Grandfamilies.org

- Generations United's mission is to improve the lives of children, youth, and older adults through intergenerational collaboration, public policies and programs
- Since 1998, Generations United's National Center on Grandfamilies:
 - Guided by GRAND Voices – a national network of caregiver advocates
 - Provides technical assistance to states and other providers
 - Federal advocacy
 - Raises awareness through media outreach, weekly communications and events
 - Provides information and resources at www.gu.org and www.grandfamilies.org



Our Work in Virginia

Grandfamilies.org

Through a partnership with Casey Family Programs, Generations United and ABA:

- Presented at Three Branch Training, October 2019
- Conducting statewide kinship assessment
 - On-line surveys
 - Information sessions postponed due to COVID-19
 - Review of laws, regulations, policies, materials and licensing standards
- Analysis
 - Analyze laws, regulations and policies, and information from surveys and information sessions
 - Identify barriers to relative foster care approval/licensing
- Recommendations
 - Policy and statutory recommendations
 - Provide other state examples of tools and best practices
- Trainings



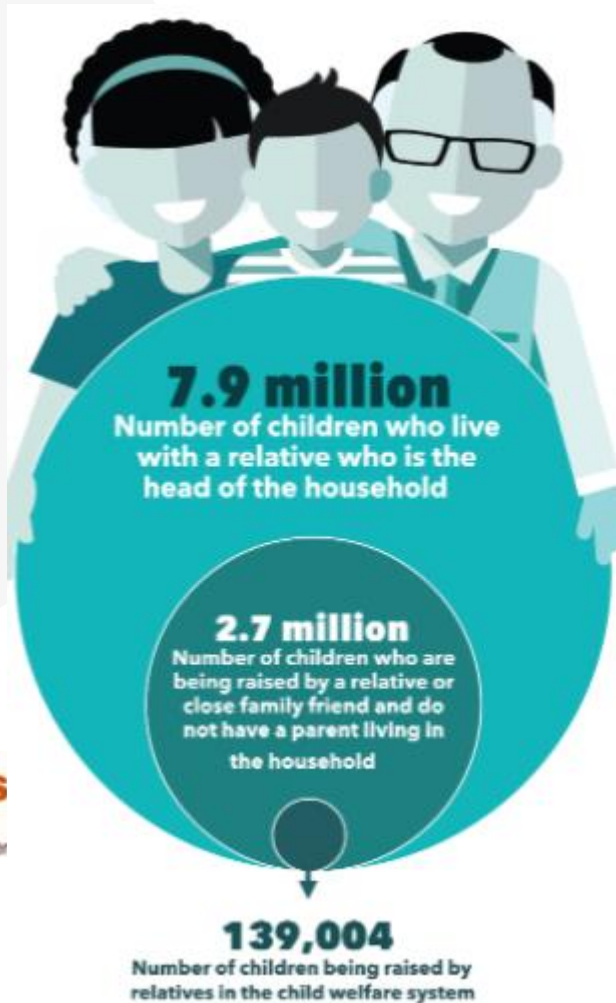
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Kinship Overview

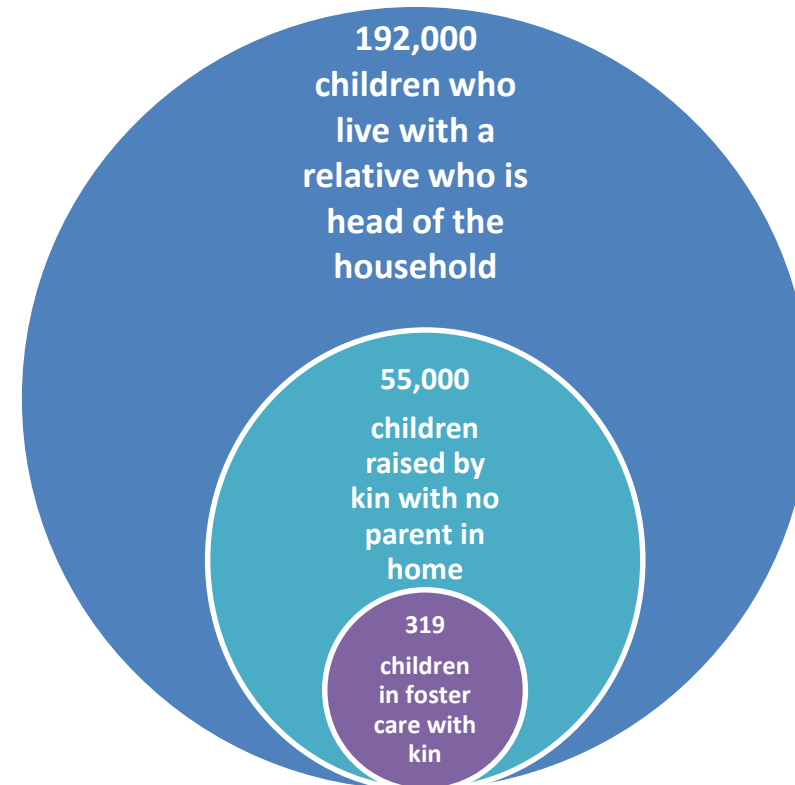
Children in Kinship Families

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United States:



Virginia:



Comparison of Kinship Care in Numbers

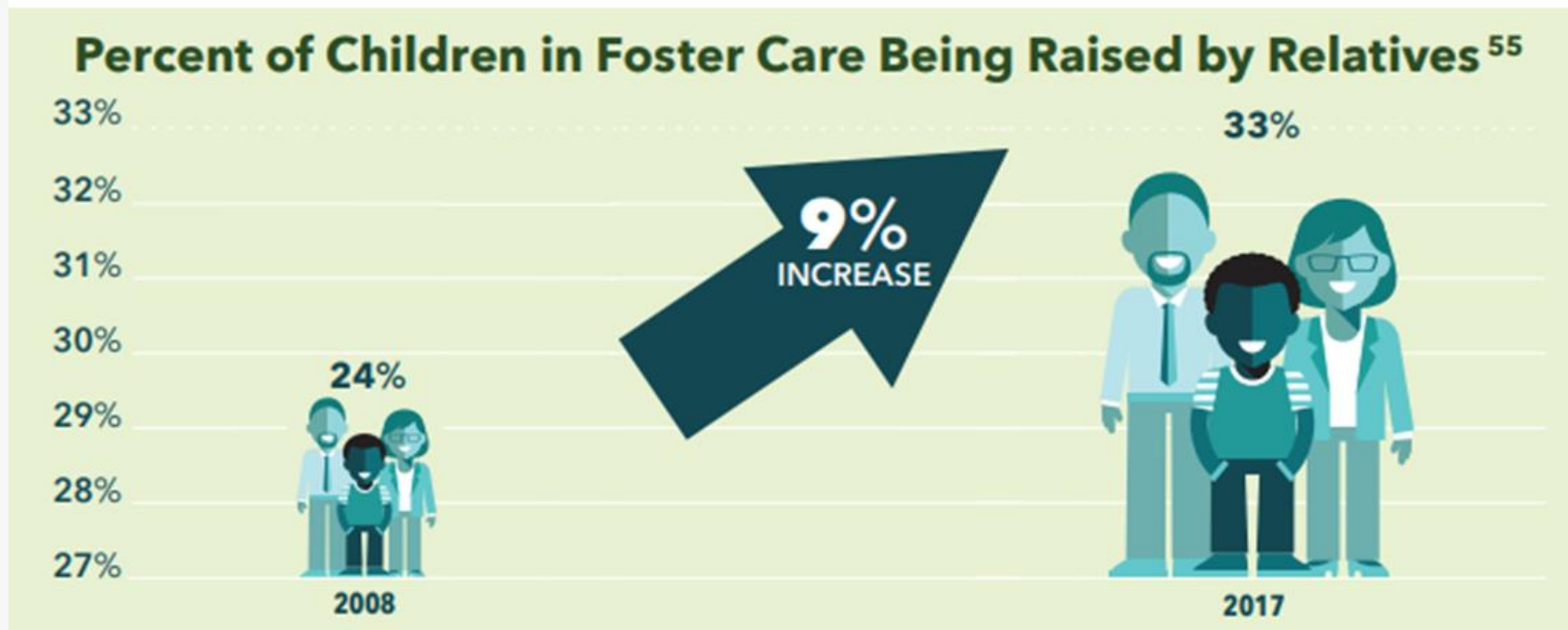
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For every 1 child in foster care with relatives:
19 children in the United States
over **170** children in Virginia
being raised by relatives outside the foster care system

Kinship Foster Care in Numbers

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In Virginia:
6.13% of foster
children are with
approved relatives

www.gu.org

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*Data is not publicly available on the percentage of these
children who are with approved/licensed relatives.*

Kinship Families Strengths: Children Thrive

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* See Children Thrive in Grandfamilies fact sheet, available at www.grandfamilies.org and www.gu.org

Legal Continuum: Care and Custody

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Legal Custody and Guardianship

- Legal Custody and Guardianship - legal responsibility to make decisions, provide care, and access services for a child is transferred from parent to another caregiver
 - Legal Custody – typically refers to family or juvenile court
 - Guardianship – typically refers to probate courts (except subsidized kinship guardianship)
- Court does not terminate parental rights or responsibilities
- Parents preference and best interest of the child considered
- Modifications allowed - parents can go back to court and ask that guardianship or legal custody be terminated and child returned to parent
- Allows caregiver to make decisions for the child and access services
- Legal custody is similar to guardianship, but the status of “guardian” may give access to more services and rights than “legal custodian”

Subtypes of Legal Custody & Guardianship

Guardianship

- Guardianship by Probate – clause in will names guardian upon death of parent and court approval/appointment.
- Temporary guardianship – parent appoints person to have temporary control of child.
- Limited guardianship – powers of guardian limited to those set forth in order of appointment.
- Standby guardianship – pre-appointed future guardian steps in after triggering event occurs.
- Guardianship by Family or Dependency Court – several states have, and many were enacted in part as mechanism to implement the federal Kinship Guardianship Assistance (GAP)

Legal Custody:

- De facto custody – child's primary caregiver for some period of time in the parents' absence granted custody.

More information:

<https://www.grandfamilies.org/Topics/Care-Custody/Care-Custody-Summary-Analysis>

Virginia Care and Custody Laws

Juvenile and Domestic Relations District Courts (JDRC)

- Private cases:
 - Legal Custody and Visitation Arrangements for Minor Children - § 20-124.2
 - Standby Guardianship - § 16.1-349
- Dependency cases:
 - Temporary Custody at removal - § 16.1-252
 - Legal Custody granted at disposition or permanency hearing - § 16.1-278.2
(This is the legal vehicle for Kinship Guardianship Assistance - § 63.2-1305)
 - Approval of entrustment agreement transferring legal custody of the child to a relative - § 16.1-277.01
 - Termination of residual parental rights - § 16.1-283

Probate Court

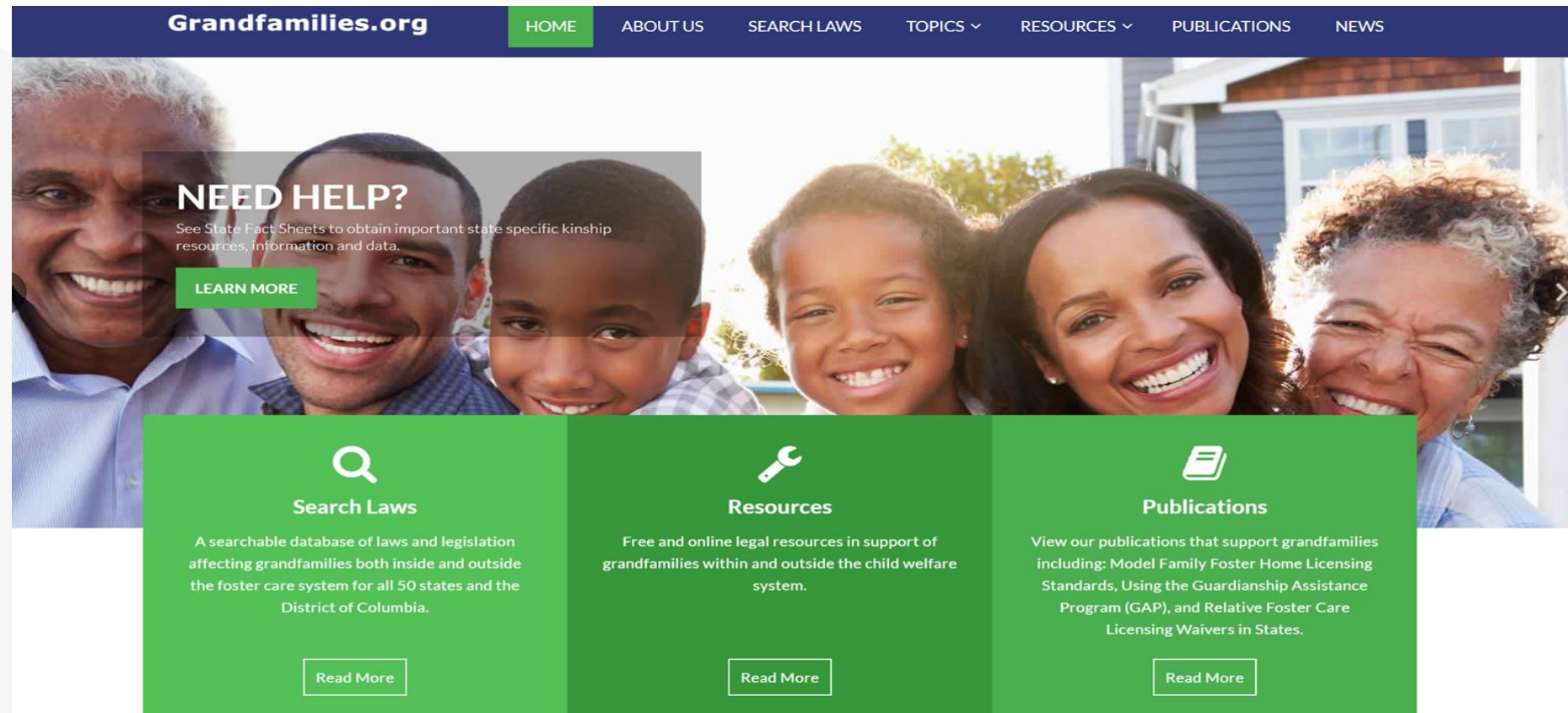
- Appointment by Parent in a Will - § 64.2-1701
- Nomination of Guardian by Minor 14 or older - § 64.2-1703
- Temporary Guardianship - § 64.2-1706

Missing Elements of Virginia Care and Custody Laws

- Temporary Custody or Guardianship in non-DSS or probate cases
Benefits: Allows for a short-term relationship and a pathway to full guardianship
- Limited Custody or Guardianship
Benefits: Allows for designation of specific rights and powers – e.g., educational
- Modification/termination process to return child safely to parent or to change existing order
Benefits: Allows for clear standard and delineation of elements to allow children to return to parents or to modify orders
- Streamlined process for filing and resolution of cases
Benefits: Allows for more accessible establishment of legal relationships (e.g., bench chards, pro se forms and clinics)

Additional Resources





www.grandfamilies.org

A collaboration of:
ABA Center on Children and the Law
Generations United
Casey Family Programs

GRANDFACTS

STATE FACT SHEETS FOR GRANDFAMILIES



The GrandFacts state fact sheets for grandfamilies include state-specific data and programs as well as information about public benefits, educational assistance, legal relationship options and state laws. Visit www.grandfamilies.org to find this and all GrandFacts state fact sheets.

Grandfamilies.org

Virginia

The Children

- 55,000 (3%) children live with a relative with no parent present.
- 174,797 (9.4%) children under 18 live in homes where householders are grandparents or other relatives.
 - 133,887 (7.2%) of these children live with grandparents.
 - 40,910 (2.2%) of these children live with other relatives.

The Grandparents

- 67,534 grandparents are householders responsible for their grandchildren who live with them. Of these:
 - 23,293 (34.5%) do not have parents present.
 - 41,133 (60.9%) are under age 60.
 - 41,128 (60.9%) are in the workforce.
 - 9,927 (14.7%) are in poverty.
 - 16,241 (24.1%) have a disability.
 - 18,504 (27.4%) are unmarried.
 - Race/Ethnicity:
 - 37,211 (55.1%) are white (not Hispanic or Latino)
 - 21,543 (31.9%) are black or African American
 - 5,065 (7.5%) are Hispanic or Latino origin
 - 2,499 (3.7%) are Asian
 - 338 (0.5%) are American Indian or Alaska Native
 - 68 (0.1%) are Native Hawaiian or other Pacific Islander
 - 1,216 (1.8%) are multiracial
 - 1,486 (2.2%) are some other race

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Questions– Contact Us

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